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UNCLAS SECTION 01 OF 02 HAMBURG 000002

SIPDIS

DEPARTMENT FOR EUR/AGS, EUR/PPD, L/LEI, AND S/CT
JUSTICE FOR BARBARA BERMAN AND PATRICIA REEDY
DHS FOR MARK KOUMANS
SIPDIS

E.O. 12958: N/A

TAGS: PTER KJUS KHLS PREL ASEC GM
SUBJECT: GERMAN AL QAEDA ACCOMPLICE FOUND GUILTY

REF: A. A) DUSSELDORF 0002

- 1B. B) 07 HAMBURG 0052
- 1C. C) 07 DUSSELDORF 0037
- 1D. D) 07 BERLIN 1398

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11. (SBU) SUMMARY: On January 24, the Schleswig- Holstein Higher Regional Court (OLG) convicted Redouane El-Habhab of founding a foreign terrorist organization and assisting a terrorist organization and sentenced him to a five year and nine month prison term. The verdict is not yet legally binding and can be appealed before the Federal Supreme Court (BGH) within a week following the verdict. The case was unique in that for the first time the Internet was considered both a tool and crime site in a German terrorist trial. Intricately gathered evidence from Internet phone protocols played a critical role in the trial, which prompted the chief judge to speak out strongly in support of online searches - an issue that continues to be contentiously debated nationally. A reference in the reading of the verdict indicated that fugitive Hamburg 9/11 cell member Said Bahaji is still attempting to contact his wife in Hamburg.
END SUMMARY.

Guilt Proven to the Full Extent

12. (U) On the evening of January 24, the First Criminal Senate of the Schleswig OLG in Schleswig-Holstein sentenced Moroccan-born German national El-Habhab to a five year and nine month prison term, thus ending a trial that lasted exactly six months. Chief Judge Mathias Hohmann stated that El-Habhab was clearly guilty of forming a foreign terrorist organization and "doubtlessly and directly benefited Al Qaeda in Iraq." He added that El-Habhab's actions had clear indications of terrorist activity (e.g. secured evidence on El-Habhab's hard disks such as details on military operations, weapons, and guerilla warfare). Similar to the information portal Wikipedia, Hohmann added that Al Qaeda succeeded in creating a site that could arguably be named "Wikiqaeda," which Muslim extremist users both utilize and expand. Moreover, he pointed out that El-Habhab had contact with the highest Al Qaeda levels through his relationship with Abu Taisir. The judge pointed out that El-Habhab swore an oath of faith to Taisir. He also stated that Taisir called El-Habhab to instruct him to get in contact with the wife of fugitive Hamburg 9/11 cell member Said Bahaji and

bring her to Pakistan. To further underscore El-Habhab's contacts with the senior Al Qaeda leadership, the judge said that El-Habhab met Khaled (ph.), the Syrian proconsul of Al Qaeda in Iraq.

¶3. (U) The judge stated that El-Habhab took Osama bin Laden's call on jihadists to "focus their attention on Sudan" to heart by organizationally and tactically recruiting jihadists for the fight against "infidels" and "crusaders" (e.g. by the use of a questionnaire on jihadists' abilities and qualifications). The judge added that the core of the Sudanese terrorist organization was created through El-Habhab's efforts, and that the organization would likely have grown further.

"Second Life" is Not Applicable: Real Crimes Committed in Real World

¶4. (U) At the outset of the reading of the verdict, the judge alluded to the importance of the Internet in the trial. He noted that it was the first time in a German terrorist trial that the Internet was both a tool and site of crime. He noted that this fact made the circumstance surrounding the case less clear cut than in the case of a bank robbery where there are "witnesses, victims and a police car chasing the culprits." However, he underscored: "The actions took place at a PC and not in 'Second Life.' The nicknames (of jihad sympathizers) were no avatars such as in 'Second Life' and the actions of the accused manifested themselves in the real world (i.e. money transfers through Western Union, logistics and recruitment for Sudanese terrorist organization). The offer of 5,000 USD was in real dollars, not 'Linden Dollars.' He concluded that true offenses and crimes were committed via the Internet."

Online Searches Would Assist in Uncovering Terrorist Activity

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¶5. (U) Hohmann pointed out that classic written messages were first introduced as evidence, with records from Internet telephone conversations added later. He explained this delay by noting that "it takes time to develop complex new software able to decrypt signals." The judge underscored that it was not the court's business to engage in policy-making. However, referring to the current debate on online searches, he pointed out that "we know that part of the call for online searches is to tap Internet phone calls before data is encrypted in order to avoid the difficulty of decryption;" and expressed appreciation for this practice.

The Guilty Charges in Detail: Bonus for Remorse

¶6. (U) The court found El-Habhab guilty on one count of founding a foreign terrorist organization (in Sudan) and six counts of terrorist assistance actions. Following are the sentences for the individual charges:

-- 1 year and 6 months for the transfer of 1,000 Euros for the purpose of trafficking three Egyptians to Iraq;
-- 2 years and 6 months for attempted bomb-building training in Algeria;
-- A total of 8 years and 9 months for smuggling four individuals;
-- 2 years and 9 months for the foundation of a foreign terrorist organization.

However, in accordance with paragraph 46 of the German Criminal

Code, the overall sentence was reduced to five years and nine months. In determining the sentence, the judge favorably considered El-Habhab's willingness to testify, his one and a half year imprisonment on remand, his abdication of restitution of cash confiscated during the search of his Internet cafi, and his critical self-assessment of his activities and reference to them as "adventurous mischief."

¶7. (SBU) COMMENT: Five years and nine months is a moderate sentence by American standards for a conviction of Al Qaeda terrorist activities. Under the German Penal Code the court could have imposed a maximum sentence of up to ten years. However, even the Federal Prosecutor only pleaded for six and a half years. With 18 months imprisonment on remand deducted and one third of the overall sentence forfeited for good conduct, Habhab can walk free in two years and four months. The wider importance of the trial lies in the judge's vivid illustration of how online searches could contribute to uncovering terrorist activity and simplifying the lines of reasoning in terrorist trials. In view of the continued controversy concerning online searches in Germany, this trial underscored and supported arguments in favor of this practice in fighting terrorism. END COMMENT.

¶8. (U) This message has been coordinated with Embassy Berlin.
JOHNSON